ARKANSAS SUPREME COURT

No. 05-1349

NOT DESIGNATED FOR PUBLICATION

RONALD WAYNE BURRELL
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered September 21, 2006

PRO SE APPEAL FROM THE CIRCUIT COURT OF LINCOLN COUNTY, LCV 2005-74, HON. ROBERT HOLDEN WYATT, JR., JUDGE

AFFIRMED

PER CURIAM

Appellant Ronald Wayne Burrell, an inmate incarcerated in the Arkansas Department of Correction, originally filed a *pro se* pleading in Lincoln County Circuit Court styled "Affidavit of Pleading to Correct an [sic] Double Jeopardy Violation of the Fifth Amendment in the Nature of Arkansas Code Annotated Section 5-1-110, Sub-section (A)-5." The pleading requested the court to reduce appellant's sentence, claiming that appellant had been convicted of both burglary and aggravated robbery, but should only have been convicted of burglary. Appellant alleged that he only intended to commit burglary, and that the aggravated robbery charge arose from the same criminal episode as the burglary.

After the State responded, pointing out that appellant had failed to indicate the cause of action under which he sought relief, appellant filed an "answer" that appears to request amendment of the pleading and later filed a "*habeas corpus* petition." The circuit court denied relief under both

the original and amended pleadings by order entered on September 12, 2005. Appellant now brings this appeal of that order.

Appellant's arguments in his brief to this court are so poorly framed that they are not clear, but he does argue that the circuit court erred in failing to issue the writ. A writ of *habeas corpus* is proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). It is well settled that the burden is on the petitioner in a *habeas corpus* petition to establish that the trial court lacked jurisdiction or that the commitment was invalid on its face; otherwise, there is no basis for a finding that a writ of *habeas corpus* should issue. *Young v. Norris*, ___ Ark. ___, ___S.W.3d ___ (February 2, 2006) (*per curiam*). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing, by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. Ark. Code Ann. § 16-112-103 (1987). *See Wallace v. Willock*, 301 Ark. 69, 781 S.W.2d 478 (1989).

In essence, appellant contends that his conviction for aggravated robbery is void.[1] It is true that we will treat allegations of void or illegal sentences similar to the way that we treat problems of subject-matter jurisdiction. *Taylor v. State*, 354 Ark. 450, 125 S.W.3d 174 (2003). Detention for an illegal period of time is precisely what a writ of *habeas corpus* is designed to correct. *Id*. at 455, 125 S.W.3d 178. However, it is clear that appellant did not meet his burden to show either facial

[1]While appellant did not provide a copy of his judgment and commitment order in his pleadings, the State provided a copy in its initial response. The judgment, entered November 30, 1992, indicates appellant was found guilty by a jury of aggravated robbery and burglary, and sentenced to thirty-four years' imprisonment on the aggravated robbery charge and twenty years' imprisonment on the burglary charge. The sentences are shown to run consecutively for a total sentence of fifty-four years.

invalidity of the commitment or lack of jurisdiction.

In appellant's pleadings, he alleged that he had entered a home in Pine Bluff in order to commit burglary. He contended that he picked up a gun and threatened the homeowner after the homeowner returned unexpectedly and came towards appellant with a baseball bat. He argued that his intent in threatening the victim was only to escape, and that the facts presented at trial did not support all elements of both charges. To the extent that appellant now argues that the State did not present sufficient evidence to support the conviction on aggravated robbery, and that he is therefore innocent of the crime, his claim is not one cognizable in a *habeas corpus* proceeding. A *habeas corpus* proceeding does not afford a prisoner an opportunity to retry his case, and is not a substitute for direct appeal or postconviction relief. *Meny v. Norris*, 340 Ark. 418, 13 S.W.3d 143 (2000). Sufficiency of the evidence and irregularities at trial are factual issues that should have been addressed on appeal. *See Friend v. Norris*, ___ Ark. ___, ___ S.W.3d ___ (December 1, 2005) (*per curiam*).

To the extent that appellant appears to contend the elements of burglary and aggravated robbery are duplicative, we do not agree. Aggravated robbery is not a lesser included offense of burglary. *Kinsey v. State*, 290 Ark. 4, 716 S.W.2d 188 (1986). The elements of the two offenses are simply not the same. In his pleadings before the circuit court, appellant clearly made no showing of evidence of probable cause to believe he was illegally detained, and the court did not err in denying his petition for writ of *habeas corpus*.

Affirmed.